

## **The Ombudsman's final decision**

Summary: The Ombudsman found fault by the Council on Mrs G's complaint about the way it granted consent for a prior approval application for a telecommunications mast in an area of outstanding natural beauty. The planning officer failed to properly document the consideration and assessment of the proposed appearance and screening of the mast. The agreed action remedies the injustice caused.

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## **The complaint**

1. Mrs G, represented by Mr H, complains that when the Council granted consent for a planning application for a 17.5 metre high telecommunications mast, it failed to properly consider the application and follow notification procedures; as a result, the mast will impact on residents' amenities and the character of the area of outstanding natural beauty and the neighbouring Conservation Area.

## **The Ombudsman's role and powers**

2. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

## **How I considered this complaint**

4. I considered all the information provided by Mr H on Mrs G's behalf and the Council's response to my enquiries, a copy of which I sent him. I sent a copy of my initial draft decision to Mr H and the Council. I considered their responses. I also considered their response to my revised draft decision.

## **What I found**

5. Mrs G lives in a village. She is unhappy with the way the Council dealt with an application for the prior approval of the erection of a 17.5-metre-high mobile telecommunications mast on a hill 150 metres away. This is in an area of

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outstanding natural beauty (AONB) which means it is protected land. Councils must make sure all decisions consider the purpose of conserving and enhancing its natural beauty and the potential impact it has on land both within and outside its boundary.

6. She argued the Council failed to properly consider relevant policies, codes of practice, and guidance when granting consent. There is a Grade II listed building nearby. She argued the Council failed to consider the impact of the mast on it. As a result of this decision, the mast impacts on local heritage and the amenities of residents.
7. The applicant submitted 2 applications for a mast at this location:
  - Application 1: the applicant withdrew this after discussion between the agent and the Council about the location and need for additional landscaping; and
  - Application 2: the planning officer's report noted this included revised siting with additional tree planting as suggested by the Council's own aboriginal officer.
8. I now consider each of her complaints:

**Notification: specialist officers**

9. Mrs G believes the Council failed to get the views of specialist officers about the application and instead, relied heavily on information provided by the applicant.
10. She is unhappy with:
  - the Council's argument the views of a landscape officer on a previous submission for this site were '*still relevant*'. This is because application 1 placed the mast on the edge/within the canopy of a mature tree. Application 2 placed it at a higher elevation and in a more open position away from this tree. This meant it had less screening than proposed earlier. In addition, the landscape officer on application 1 recommended a tree health assessment which was never done.
  - the claim the planting scheme was properly assessed by a specialist officer.
  - the conservation officer's failure to consider the impact of the mast on the setting of an existing, and proposed, conservation areas and listed building.
11. The planning officer's report referred to consultation with 'Conservation' who said the mast would have no impact on the listed building. It also said the landscape officer had, '*No further comments*'.

**Analysis**

12. I took account of the landscape officer's comments on application 1 which included:
  - Saying it needed to include a tree survey which would assess the health of the neighbouring tree and establish its root protection area. No development should take place within this area; and
  - Further landscaping proposals were needed to provide more extensive screening.
13. While Mrs G is unhappy with the failure to carry out a tree survey, I am not satisfied this was necessary for application 2. This was because the mast was moved away from this tree and beyond its canopy area.

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14. On application 2, the applicant sent a landscape plan. This showed the planting of 8 new trees. Application 1 had no screening plans. The applicant had, therefore, sent the Council details about the screening proposed for application 2.
  15. On balance, I am satisfied the landscape officer's comments on application 1 were addressed on application 2.
  16. The Council originally said in response to my enquiries that the landscape officer was not consulted on application 2. In response to my draft decision it then said the officer was consulted but it had no evidence showing this and later still, provided screen shots showing the planning officer had consulted the landscape officer.
  17. I found fault no fault on this complaint. The evidence shows the landscape officer was consulted. It would have been good practice if the landscape officer had proactively confirmed she had no comments to make on application 2. This is because it would have confirmed the officer had read the application and decided not to comment. Not replying at all leaves an element of doubt about whether this was intended or not. This is because it could be due to her deciding there was nothing to say on it or, it could mean the officer did not receive the email, or had received it, but omitted to reply. The Council confirmed it was unable to contact the officer for clarification as she has since left its employment.
  18. While Mrs G may disagree with the conclusion reach by the conservation officer about the impact of the mast on the listed building, I am satisfied it was considered. The conservation officer was entitled to exercise professional judgement in reaching the conclusion given.

**Policies and guidance:**

19. Mrs G is also unhappy with the failure of the Council to properly consider planning guidance and specifically, the emerging Neighbourhood Plan. She argued this means the Council failed to take account of the need to protect and enhance the landscape character and quality along with heritage, for example.
20. The Council accepted the planning officer's report failed to refer to the Neighbourhood Plan but argued the issues raised by Mr H were considered.
21. The planning officer's report noted the following:
  - The site search area to provide the necessary coverage in the area is very limited and confined to an area including, and just beyond, the built-up boundary area of the village;
  - The proposed planting in time will help assimilate the mast in the wider landscape/AONB. Along with the lightweight lattice structure of the mast, the officer considered its visual impact minimised;
  - The conservation officer confirmed it would have no adverse impact on the setting of the nearby listed building;
  - Given the separation distances of the mast to some properties near the site, it was not considered to result in any significant adverse impact on their amenities; and
  - The mast would have no significant detrimental impact on the character or appearance of the area or, neighbours' amenity.
22. The report referred to the following policies from its Local Plan:

- Strategy 7: Development in the countryside is only allowed where it accords with a specific Local or Neighbourhood Plan policy that allows it and where it would not harm the distinctive landscape, amenity, and environmental qualities within which it is located. This would include the disruption of a view from a public place which forms part of the distinctive character of the area or otherwise causes significant visual intrusions;
- Strategy 46: Development will need to be done in a way that is sympathetic to, and helps conserve and enhance, the quality and local distinctiveness of, the natural and historical landscape character of East Devon, in particular in the AONB. Development is only allowed where it conserves and enhances the landscape character of the area, does not undermine its quality, and is appropriate to the economic, social, and wellbeing of the area.
- Policy D1: To ensure new development is of a high-quality design and locally distinctive, proposals are only allowed where they respect key characteristics and special qualities of the area, for example, and do not adversely affect the distinctive historic or architectural character of the area.
- Policy TC1: For telecommunication systems, the Council will consider its siting, design, and landscaping to minimise the visual impact on the surrounding area while taking account operational efficiency. They are not to have an adverse effect on areas designated for their landscape or nature conservation value. It will not have a serious adverse effect on the character, appearance, and setting of a conservation area or listed building.
- Policy EN8: The significance of heritage assets and their settings should be established by the applicant through a proportionate but, systematic assessment following the Council's guidance notes for 'Assessment of Significance' and guidance from English Heritage ('The Setting of Heritage Assets').

### Analysis

23. Prior Approval is like the grant of outline planning consent with the siting and detailed appearance of the mast reserved. The role of the Council on this application was not to decide if the mast can be erected but, to be consulted on its precise siting and appearance. This is because the law approves the principle of the development as electronic communication code operators have permitted development rights. (*Part 16, Town and Country Planning (General permitted Development) (England) Order 2015*)
24. The Council had 56 days to make and notify the applicant of its decision about whether Prior Approval was needed about the siting and appearance of the mast.
25. The Code of Best Practice on Mobile Network Development in England (2016) explains its principal aim is to ensure the government's objective of supporting high quality communications infrastructure is met. It explains the role of planning authorities includes not having 'no-go' or defined exclusion zones around sensitive sites.
26. The Code states general design principles are important considerations which include:
  - a proper assessment of the character of the area, especially designated heritage assets and their settings, where more sensitive solutions may be needed.

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- analysis of near and far views of the proposals and how these may be experienced by the public and residents.
  - Special attention to the impact on designated heritage assets and conservation areas where it is desirable to preserve or enhance the character and appearance of the conservation area.
27. The planning officer's report noted the operator considered, and discounted, 4 other sites. The report explained the site search area to provide the coverage needed was very limited and confined to an area just beyond the village. The report shows the officer considered the reasons for siting the mast at this location.
28. The report also noted there would be, *'inevitably some views of the proposed installation from both the village and the wider landscape of the area, however, the proposed planting, will in time help to assimilate the mast in the wider landscape/AONB'*. The report concluded this, along with the lightweight lattice structure of the mast, meant its visual impact had been minimised.
29. The documents sent in support of the application show the landscaping proposal included 6 common oak and 2 field maple. These would be spaced along the hedge running along a nearby lane. The operator chose this site partly because natural screening from existing trees which would shield it.
30. It also said, *'partial screening will leave only the top of the mast in view'*. When viewed from the east (the village), *'only the top of the mast will be visible and the lattice structure will blend into the top of the tree and skyline'*. It went on to note that given the abundance of trees in the area and the proposed trees, *'further views of the mast will be obscured, reducing even more the impact of the structure of the area'*.
31. I am not satisfied there is recorded evidence showing the planning officer properly considered the appearance and screening of this mast. This failure amounts to fault. I say this because:
- a) The report states the proposed planting will *'in time assimilate the mast'* in the wider landscape and would have no significant impact on the character or appearance of the area. The report gives no details about how this conclusion was reached based on the planting information provided. None of the plans or documents I have seen give the land levels of the site location for the mast and those of the existing hedging where the proposed trees were to be planted. The photographs Mr H sent appear to show the hedge at a lower level to the mast location. He describes the lane they run along as 'sunken' and several metres lower than the site of the mast. The hill on which the mast is sited runs down towards the village. Any height differential in relation to this hedge is important as the mast height is 17.5 metres.
  - b) In response to my initial draft decision, the Council accepted the planning officer's report was *'not as detailed as it may have been'* for more controversial applications as it received no comments from the parish council, or ward members, and only a couple of neutral comments from residents. It explained the report was written in the context of limited local interest and with a presumption of a reasonable level of knowledge on the part of any reader, which was mainly going to be an experienced planning officer. The Council argued the failure of the report to go in to a significant level of detail does not mean a failure to consider relevant matters.
  - c) While I acknowledge what the Council said, I remain satisfied the report needs to be a standalone document so anyone reading it, whether they are a member

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of the public, or a judge at court for example, can see exactly what was considered and assessed. I am not convinced limited responses to an application justifies the omission in a report of relevant detail showing it was properly assessed.

- d) In response to my initial draft decision, the Council said the planting could not totally screen this mast. It aimed to minimise its impact to an acceptable level. While I accept this is correct for this mast in this location, the Council failed to provide evidence documenting how it considered and assessed the landscaping proposed.
- e) I consider the fault caused Mrs G some avoidable injustice. This caused her distress through some stress, inconvenience, and frustration. I am not satisfied it caused any uncertainty as, on balance, I consider the decision would not have differed but for the fault.

32. I also considered the complaint about the report failing to consider the Neighbourhood Plan. This Neighbourhood Plan is part of the government's approach to planning which aims to give local communities more say about what developments should be encouraged in their area. This Neighbourhood Plan's objective includes protecting and enhancing the AONB landscape. It refers to the National Planning Policy Framework guidance which gives '*great weight*' to conserving the landscape and scenic beauty of AONBs, for example, which is also reflected in Strategy 46 of the Local Plan.
33. The Neighbourhood Plan includes policies like:
- B1: developments resulting in harm to, or the loss of, the significance of designated and undesignated heritage assets or their settings will not be supported which would include conservation areas.
  - B2: good design taking into account site characteristics, siting, scale, height and landscaping, for example.
  - N1: the provision of landscaping scheme to ensure the development complements local character and enhances biodiversity
34. The Council accepted the officer failed to refer to the Neighbourhood Plan in the report. This is fault.
35. I am not satisfied it caused a significant injustice. This is because the issues referred to in the Neighbourhood Plan were considered, subject to the points made about screening, in the officer's report.

### **Agreed action**

36. I took account of our guidance on remedies.
37. The Council will, within 4 weeks of the final decision on this complaint, carry out the following:
- a) Send a written apology to Mrs G for the failure to document how the appearance and screening of the mast was considered and assessed and for the failure of the report to refer to the Neighbourhood Plan;
- b) Remind officers of the need to refer to the Neighbourhood Plan in their reports where appropriate, and to accurately record who was consulted/commented;

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- c) Remind planning and landscape officers it would be good practice to have a written record confirming those consulted on an application wished to make no comments on it; and
  - d) Officers will visit the site and monitor it over the next 12 months to assess the screening measures implemented by the applicant. If the measures are inadequate because the applicant failed to carry out what was agreed, the Council will contact the applicant about its obligations under condition 4.

### **Final decision**

- 38. The Ombudsman found fault on Mrs G's complaint against the Council. The agreed action remedies the injustice caused.

### **Investigator's decision on behalf of the Ombudsman**